

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Eva Lynn Mayfield,

Petitioner,

v.

Charles L. Ryan, et al.,

Respondents,

CV 13-946 TUC DCB

O R D E R

This matter was referred to Magistrate Judge Leslie A. Bowman, on September 11, 2013. Pursuant to Rules of Practice for the United States District Court, District of Arizona (Local Rules), Rule (Civil) 72.1(a), she issued a Report and Recommendation (R&R) on September 17, 2014. (Doc. 77: R&R). She recommends that the Amended Petition for Writ of Habeas Corpus be dismissed because it is barred by a one-year statute of limitation, 28 U.S.C. § 2244(d).

STANDARD OF REVIEW

The duties of the district court, when reviewing a Report and Recommendation of a Magistrate Judge, are set forth in Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Fed.R.Civ.P. 72(b), 28 U.S.C. § 636(b)(1). When the parties object to a Report and Recommendation (R&R), “[a] judge of the [district] court shall make a *de novo* determination of those portions of the [R&R] to which objection is made.” *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985) (quoting 28 U.S.C. § 636(b)(1)). When no objections are filed, the district court does not need to review the R&R *de novo*. *Wang v.*

1 *Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir.2005); *United States v. Reyna-Tapia*, 328 F.3d 1114,
2 1121-22 (9th Cir.2003) (*en banc*).

3 The parties were sent copies of the R&R and instructed they had 14 days to file written
4 objections. 28 U.S.C. § 636(b), *see also*, Federal Rule of Criminal Procedure 72 (party objecting
5 to the recommended disposition has fourteen (14) days to file specific, written objections). To
6 date, no objection has been filed.

7 REPORT AND RECOMMENDATION

8 Pursuant to 28 U.S.C. § 636(b), this Court makes a *de novo* determination as to those
9 portions of the R&R to which there are objections. 28 U.S.C. § 636(b)(1) ("A judge of the court
10 shall make a de novo determination of those portions of the report or specified proposed findings
11 and recommendations to which objection is made.") To the extent that no objection has been
12 made, arguments to the contrary have been waived. *McCall v. Andrus*, 628 F.2d 1185, 1187 (9th
13 Cir. 1980) (failure to object to Magistrate's report waives right to do so on appeal); *see also*,
14 Advisory Committee Notes to Fed. R. Civ. P. 72 (citing *Campbell v. United States Dist. Court*,
15 501 F.2d 196, 206 (9th Cir. 1974) (when no timely objection is filed, the court need only satisfy
16 itself that there is no clear error on the face of the record in order to accept the recommendation).

17 While there are no objections and review has, therefore, been waived, the Court
18 nevertheless reviews at a minimum, *de novo*, the Magistrate Judge's conclusions of law.
19 *Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (citing *Turner v. Duncan*, 158 F.3d 449,
20 455 (9th Cir. 1998) (conclusions of law by a magistrate judge reviewed *de novo*); *Martinez v.*
21 *Ylst*, 951 F.2d 1153, 1156 (9th Cir. 1991) (failure to object standing alone will not ordinarily
22 waive question of law, but is a factor in considering the propriety of finding waiver)). The Court
23 finds the R&R to be thorough and well-reasoned, without any clear error in law or fact. *See*
24 *United States v. Remsing*, 874 F.2d 614, 617-618 (9th Cir. 1989) (*United States v. Remsing*, 874
25 F.2d 614, 617-618 (9th Cir. 1989) (citing 28 U.S.C. § 636(b)(1)(A) as providing for district court
26 to reconsider matters delegated to magistrate judge when there is clear error or recommendation
27 is contrary to law).
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1 Magistrate Judge Leslie A. Bowman considered Petitioner's assertion that the statute of
2 limitation period was tolled. She concluded that the limitation period was not renewed when the
3 Arizona Court of Appeals denied the Petitioner's petition for review of the trial court's decision
4 dismissing her third post-conviction relief notice. Judge Bowman correctly applied the law, .
5 *See Ferguson v. Palmateer*, 321 F.3d 820, 823 (9th Cir. 2003). The Court accepts and adopts the
6 R&R as the opinion of the Court, pursuant to 28 U.S.C. § 636(b)(1). For the reasons stated in
7 the R&R, the Court dismisses the Amended Petition for Writ of Habeas Corpus.

8 **Accordingly,**


9 **IT IS ORDERED** that the Report and Recommendation [Doc. 17] is adopted as the
10 opinion of the Court.

11 **IT IS FURTHER ORDERED** dismissing the Amended Petition for Writ of Habeas
12 Corpus as time barred. (Doc. 9.)

13 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter Judgment
14 accordingly.

15 **IT IS FURTHER ORDERED** that in the event Petitioner files an appeal, the Court
16 declines to issue a certificate of appealability, pursuant to Rule 11(a) of the Rules Governing
17 Section 2255 cases because reasonable jurists would not find the Court's procedural ruling
18 debatable. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

19 DATED this 29th day of January, 2015.

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22 David C. Bury
23 United States District Judge
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